MOTION FILED
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No. 01-8

In The

# Supreme Court of the United States

ARKANSAS PRESBYTERY OF THE
CUMBERLAND PRESBYTERIAN CHURCH,

*Petitioner,*

v.

GARY D. HUDSON AND
PALMETTO CUMBERLAND PRESBYTERIAN CHURCH,

*Respondents.*

**On Petition For Writ Of Certiorari
To The Supreme Court Of Arkansas**

## MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE THE REVEREND CATHERINE URICH, STATED CLERK OF THE PRESBYTERY OF ARKANSAS; THE REVEREND JOSEPH SHEELER, STATED CLERK OF THE PRESBYTERY OF THE PINES; THE REVEREND CLIFTON KIRKPATRICK, STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.) IN SUPPORT OF THE PETITIONER

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## MOTION FOR LEAVE TO FILE *AMICUS CURIAE BRIEF*

Pursuant to Rule 37.2(b) of the Rules of this Court, the undersigned Stated Clerks of governing bodies of the Presbyterian Church (U.S.A.) move for leave to file a brief *amicus curiae* in support of the Petitioner in the above captioned case. Petitioner's counsel has consented to the filing of this brief but the Respondent's counsel has not.

The petition for *certiorari* demonstrates that the Arkansas Supreme Court has misapplied this Court's clear and unambiguous instructions, most recently affirmed in *Jones v. Wolf*, 443 U.S. 595 (1979), causing the First Amendment Protections this Court has so zealously defended and interpreted to be denied religious citizens in the state of Arkansas. The accompanying *amicus curiae* brief demonstrates great harm to religious self governance caused by this misinterpretation of this Court's instruction.

For these reasons, as well as those set forth in the attached brief *amicus curiae*, movants respectfully request the Court to grant their motion for leave to file the accompanying brief supporting the petition for writ of *certiorari*.

September 20, 2001

Respectfully submitted,

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

**The Reverend Catherine Urich, Stated Clerk of the Presbytery of Arkansas The Reverend Joseph Sheeler, Stated Clerk of the Presbytery of The Pines The Reverend Clifton Kirkpatrick, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.)**

*Amici*, representing both Presbyteries of the Presbyterian Church (U.S.A.) having churches within the state of Arkansas with 133 congregations within the state of Arkansas related to each other and to the national religious practice in a hierarchical connection. The Cumberland Presbyterian Church shares a common history with The Presbyterian Church (U.S.A.).

The predecessor denominations to the Presbyterian Church (U.S.A.) were the litigants in both *Watson v. Jones*, 80 U.S. 679 (1871), and in *Jones v. Wolf*, 433 U.S. 595 (1979). In *Watson*, Court recognized that under the polity of the Presbyterian Church all property is held in trust. In *Jones* this Court invited churches, like the Presbyterian Church (U.S.A.), to make such trusts explicit in their church *constitutions*. The predecessors of the Presbyterian Church (U.S.A.), like the Petitioners in this case, accepted that invitation and did make their trust clauses explicit in the church *constitutions*.

One hundred eighteen out of one hundred twenty-nine of our congregations in Arkansas were chartered prior to the adoption of that explicit language in 1980.

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[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

The Arkansas Supreme Court has misinterpreted this Courts decision in *Jones* so as to dramatically limit the effect of the rights and privileges of the Petitioner and these *amici* to determine how the property of their congregations shall be held. That would likely have catastrophic consequences for the mission and ministry of the Petitioners and these *amici*.

This case provides this Court the opportunity to correct the erroneous interpretation the Arkansas Supreme Court has made of this Court's clear and unambiguous instructions in *Watson* and *Jones*.

## ARGUMENT

### I. The Arkansas Supreme Court has misapplied this Court's clear guidance in *Jones v. Wolf* thereby depriving churches in Arkansas the protection this Court has provided churches in other jurisdictions.

In 1979, in the Watershed decision of *Jones v. Wolf*, 433 U.S. 595 (1979), this Court brought great clarity to the legal doctrine of "neutral principles,"[2] applying that doctrine to church property disputes.[3] In *Jones* this Court advised that:

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[2] First Announced in *1970 in Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367.

[3] In *Watson v. Jones*, 80 U.S. 679 (1871) this Court first recognized that property was held in trust " . . . for the use of the persons who by the constitution, usages, and the laws of the Presbyterian body are entitled to that use," at 721.

> under the neutral principles approach, the outcome of church property dispute is not foreordained. At any time **before** the dispute erupts, the parties can ensure if they so desire that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or. . . . Alternatively, **the constitution of the general church can be made to recite an express trust in favor of the denominational church.**

**A. *Jones* provides that the Church Constitution in effect at the time the dispute arises is the standard that applies.**

In the present case, the Arkansas Supreme Court explicitly adopted the standard this Court laid out in *Jones* for such disputes within the state of Arkansas.[4] However that Court misapplied the *Jones'* standard in that it applied that standard to the time of conveyances[5] rather than to the time the dispute arose. This contradicts this Court's explicit standard as set forth in *Jones*.[6] As the Petitioner's brief accurately notes,[7] the Arkansas Supreme Court is the only State Court of last resort to so misapply this Court's clear instruction. That leaves

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[4] *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 40 S.W. 3d 301 (Ark. 2001) at 306 of their opinion: "We now explicitly adopt the neutral principles approach outlined by the United States Supreme Court in *Jones, supra*, as the appropriate means of resolving church property disputes.

[5] 40 S.W. 3d at 309.

[6] *Jones* at 605.

[7] Petitioner's Brief page 11.

Churches choosing to conduct ministry within the State of Arkansas with an extremely difficult burden and makes First Amendment protection dependant upon which jurisdiction one chooses to practice one's religion.

Like the petitioner, the two predecessor denominations of the Presbyterian Church (U.S.A.) each took this Court at its word in *Jones* and amended their respective Church Constitutions following this Court's invitation[8] to "recite an express trust in favor of the denominational church."[9] A very large number of the Presbyterian Church (U.S.A.)'s congregations were chartered, and real estate purchased, prior to 1980.[10] The ability of these

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[8] The United Presbyterian Church in the United States of America amended its constitution in 1980 (*Minutes*, p. 99) and the Presbyterian Church in the United States amended its constitution in 1981. (*Minutes*, p. 90ff., 224ff.). The clause in the Presbyterian Church (U.S.A.)'s Constitution (*Book of Order*) is found at G-8.0201 and reads:

> All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

[9] In *Jones* this Court merely advised the safe course for preserving the property interest recognized in *Watson* (see footnote 3).

[10] In Arkansas alone, 118 out of 129 were chartered prior to 1980.

*amici* to do mission in Arkansas is seriously disrupted by the decision of the Supreme Court of Arkansas.

**B. In Church Property Disputes involving hierarchical Churches another factor often considered by Courts is whether the local church has continued to participate in the denomination subsequent to the adoption of trust language by the parent Church.**

Many Courts attempting to resolve property disputes under neutral principals in hierarchical churches have also looked to whether a congregation has continued to participate in the denomination after language explicitly creating a trust has been added to the church's constitution.[11] Some courts have even suggested that if a local church wishes to remain independent of the influence of a parent church body, it must maintain this independence in the important aspects of its operation – e.g., polity, name, finances.[12]

The dissent in the Arkansas Supreme Court got it exactly correct. The dissent accurately read *Jones* to "give effect to the Constitution of the Cumberland Presbyterian

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[11] For example, *see United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 150 Ind. App. 574, 1971; *Carnes v. Smith*, 236 Ga. 30, 1976; *Bishop and Diocese of Colorado v. Mote*, 716 P. 2d 85, 1986; *Kendysh v. Holy Spirit Byelorussian Autocehphalic Orthodox Church*, 683 F. Supp. 1501, 1987; *Church of God in Christ v. Board of Trustees of New Jerusalem Church of God in Christ*, 26 Kan. App. 2d 569, 1999.

[12] *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 589 N.E. 2d 915, 925, 1976; *Carnes v. Smith*, 222 S.E. 2d 322, 328, 1976.

Church . . . because it was in effect for several years before the dispute between the parties arose."[13] The dissent would have honored the trust explicitly codified by the 1984 amendment to the Cumberland Presbyterian Church's Constitution. These *amici* believe the majority should be directed to do so as well.

The only circumstances where these *amici* are aware that courts have failed to enforce trust language in hierarchical church constitutions are cases where the local congregation sought to leave the parent Church prior to the trust language being adopted or in effect.[14] Those facts do not exist in the current conflict. The Cumberland Presbyterian Church amended its Constitution in 1984; this dispute arose in 1992.[15]

## CONCLUSION

For all the foregoing reasons and those asserted by the Petitioner, Arkansas Presbytery, these *amici* urge this Court to accept the *writ of certiorari* and

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[13] Dissenting opinion at, 40 S.W. 3d at 311.

[14] For example, *see Presbytery of Beaver Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church*, 489 A.2d 1317 (1985). In that case the Middlesex church advised the Presbytery of its intention to leave the United Presbyterian Church (USA) prior to the effective date of the trust language quoted in footnote 8.

[15] Arkansas Supreme Court Opinion, 40 S.W. 3d at 312.

Vacate the Judgment of the Arkansas Supreme Court, leaving the Arkansas Presbytery in control of the real estate as required by this Court's analysis in *Jones*.

Or in the alternative

Reverse and Remand for reconsideration applying the clear instruction this Court provided in *Jones* and which the Dissent so clearly understood.

Respectfully submitted,

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Dated: September 20th, 2001